

**MAR 16 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

YUVAL DEREI,

Defendant - Appellant.

No. 05-30173

D.C. No. CR-03-00343-FDB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Franklin D. Burgess, District Judge, Presiding

Argued and Submitted January 26, 2006  
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and BURNS<sup>\*\*</sup>, District Judge.

**1.** Derei's misjoinder argument is without merit. Even assuming that the district court erred in joining the false statement counts, any such error was harmless,

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Larry A. Burns, United States District Judge for the Southern District of California, sitting by designation.

because the court dismissed those charges and issued a limiting instruction. *See United States v. Sarkisian*, 197 F.3d 966, 976-77 (9th Cir. 1999). Nor did Derei suffer prejudice from the denial of his motion to sever under Fed. R. Crim. P. 14, in light of the court's limiting instruction and the overwhelming evidence of Derei's guilt.

2. Similarly, any error occasioned by the district court's denial of Derei's motion to withdraw the evidence admitted in conjunction with the dismissed false statement charges, or alternatively, instruct the jury to disregard evidence related to the charges was harmless. There was substantial evidence of Derei's participation in the conspiracy, including testimony by Nationwide employees and a victim who witnessed Derei's direct participation in the scheme. *See United States v. Gonzalez-Flores*, 418 F.3d 1093, 1102 (9th Cir. 2005).

**AFFIRMED.**